No. 89-537

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

FRANK D. CAMP,
Petitioner-Appellant

v.

NEW YORK UNIVERSITY
and JOHN BRADEMAS and
CARL SCHMIDT and ROBERT BERLIN
Respondents-Appellees

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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40 pp

QUESTIONS PRESENTED FOR REVIEW

The questions presented, which comprise an issue of incalculable public importance and to which the district and appellate courts have not grasped the significance of, are:

1. Whether the Court of Appeals, in affirming the dismissal of the district court and denying a Suggestion of Rehearing In Banc, has failed to judicially recognize and exercise its powers over the "uncharted" issue of educational fraud and misrepresentation in universities and colleges throughout the United States?

   a. Whether the district court dismissal, based on an inflexible interpretation of adequate pleading, was governed by a judicial failure to distinguish academically valid liberal arts degrees from academically bogus educationist degrees, an issue which extends far beyond Petitioner's immediate

Petition in that it involves our national educational system and the ever-increasing competition in the international "marketplace of ideas."

2. Whether the Court of Appeals failed to give equitable attention to Petitioner's Pro Se status and the especial interrelationship between the difficulties of pleading fraud with particularity and later discovery?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

No. _____

FRANK D. CAMP,
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v.

NEW YORK UNIVERSITY
and JOHN BRADEMUS and
CARL SCHMIDT and ROBERT BERLIN
Respondents-Appellees

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

The petitioner, Frank D. Camp, pro se, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in this matter.

OPINION BELOW AND STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Second Circuit affirming the dismissal of Petitioner's district court case appears as Appendix A hereto. Also, the decision of the same appellate court denying a Suggestion of Rehearing In Banc appears as Appendix B hereto. The former decision is dated June 5, 1989 and the latter is dated September 14, 1988.

The relevant opinion of the United States District Court appears as Appendix C and is dated February 17, 1988

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

RELEVANT STATUTORY PROVISIONS

Given that common law dictates this action, the statutory provisions are limited to the especial and exceptional status of Petitioner under 28 U.S.C. §1654.

The cause of this action is an uncharted one that, upon information and belief, has no precedent in the courts.

STATEMENT OF THE CASE

The initial action against New York University[1], John Brademas, Carl Schmidt, and Robert Berlin("Respondents-Appellees")was filed in the United States District Court for the Southern District of New York("district court ") on February 18, 1986, in which Frank D. Camp, plaintiff pro se("Petitioner-Appellant")alleged that Appellees had violated his constitutional rights of free speech and due process, engaged in violations of New York State consumer protection laws, and committed common law fraud and misrepresentation as regards their education raison d'être. Appellees, moving that failure to state a claim upon which relief could be granted, failure to to argue the state law claims before a statue of limitations had expired, and failure to adequately plead the fraud and misrepresentation claim with particularity, sought dismissal.

The presiding district court judge, Judge Shirley Wohl Kram, granted an attendant request of defendant for summary judgment as to the state law claims; however, the fraudulent

1. New York University's School of Education, Health, Nursing and Arts Professions ("SEHNAP")is the School Petitioner attended.

misrepresentation claim was dismissed without prejudice pursuant to an amended complaint. The latter was filed by Appellant on May 18, 1987; and Appellees followed with a motion to dismiss citing Rules 9 (b) and 12 (b) of the Federal Rules of Civil Procedure("FRCP"), thereby repeating their initial allegation of failure to plead with particularity and failure to state a claim upon which relief can be granted. Appellees, moreover, cited Rule 11 of the FRCP in moving for sanctions against Appellant Pro Se.

(Appellant had hitherto cited Rule 11 as reason for multiple sanctions against Appellees due to various allegations of mail abuse, scandalous language and general unprofessionalism and pettiness on the part of counsel for Appellees.)

The district court, on February 17, 1988, issued its Memorandum and Order("Dismissal Order")dismissing Appellant's amended complaint with prejudice based on failure to plead with particularity as regards the aforementioned Rule 9 (b) and failure to specify with exactness

the misrepresentations and fraud alleged in the amended complaint. Appellee's motion for sanctions was denied.

The judgment was thus entered on February 24, 1988 and Appellant filed his Notice of Appeal to the court of appeals for the second circuit("court of appeals")on February 24, 1988.

Appellant's Brief followed on May 23, 1988 and Appellee's submitted their Brief on June 23, 1988. On September 14, 1988 the court of appeals affirmed the opinion and judgment of the district court.

Pursuant to an apparent filing error in the court of appeals, Appellant's Suggeston for Rehearing In Banc was granted, per an "out-of-time" request, was granted on February 24, 1989.

The Suggestion of Rehearing In Banc was denied on June 5, 1989.

On August 14, 1989 Appellant filed an Application for Extension of Time to file this petition for writ of certiorari to Justice Thurgood Marshall. The order to file the petition was accordingly granted on August 21, 1989.

REASONS FOR GRANTING THE PETITION

PROPOSITION I

THE COURT OF APPEALS HAS FAILED TO JUDICIALLY RECOGNIZE AND EXERCISE ITS POWERS OVER THE "UNCHARTED" ISSUE OF EDUCATIONAL FRAUD AND MISREPRESENTATION IN UNIVERSITIES AND COLLEGES THROUGHOUT THE UNITED STATES.

Education fraud presents an unexplored area in law and Petitioner has discovered no precedent upon which this Petition can turn for firm guidance. Far more substantive that the doomed educational malpractice suits which erupted in the courts over a decade ago, the issue of educational fraud and misrepresentation is one that involves the abuse of trust by educators and it is accordingly a fit subject for the courts to entertain. (Petitioner relies on common law.)

John Brademus, as president of New York University, must be held responsible for the deceit and fraud that exists in SEHNAP. The mislabeled " professors "of SEHNAP, Carl Schmidt and Robert Berlin, who bear mislabled degrees and titles that would lead the public to think they have degrees in English while their actual degrees are only in pedagogy, must also be held responsible for what is a widespread fraud that confuses not only the public, but

the courts as well, as evidenced by the dismissal order of the district court which reads on pg. 4,¶1 of the order(attached exhibit):

> This Court fails to see how plaintiff was harmed in any way by receiving a Master of Arts degree.

Now this admitted failure of the court to distinguish between a Master of Arts degree in English Education and a bona fide Master of Arts degree in English forms the raison d'être of the dismissal order. The Court of Appeals adopted the argument of the district court and referred specifically in its Affirmation Order to the very section quoted above.

The matter is not arcane: there exists in our colleges and universities departments which teach only methods of teaching and indeed they stem from teacher's colleges or "normal" schools. Their professors have degrees only "in teaching" as it were and the traditional disciplines and subject matters (e.g., English, religion, history, philosophy, etc.)are well outside of the purview of these training schools for teachers.

Indeed, as is evidenced in New York University, a hostility

exists between the liberal arts department and that of the educationists and it is an implacable hostility that is not limited to Respondent New York University.

It follows, therefore, that if the teaching in SEHNAP, a department of education despite its ambiguous title, is not that of liberal arts and that if the professors in SEHNAP do not hold degrees in any subject matter as described above, then the degrees they offer are likewise not liberal arts degrees.

There would be no fraud, no misrepresentation--and no instant Petition--if Respondents did not seek to cloak the teaching, professors and degrees offered in SEHNAP under the appearance of liberal arts. However, as the record in the lower court amply demonstrates, SEHNAP has been in the business of dispatching brochures throughout the country and abroad advertising, in particular, a Study-Abroad program that features experts in the fields of religion, art, history and indeed the languages of the host countries.

The "experts" however are Professors Schmidt and Berlin,

along with various of their graduate students who are disguised as the aforementioned "experts." It is a lucrative business and many foreign students, in addition to Americans like Petitioner, become victims of this blatant mislabeling by Respondent.

Space does not permit Petitioner to detail the many instances of observed fraud[Petitioner attempted to do so with diligence in the district court; however, the "adequate pleading" criterion held sway over the merits of his argument as attested in the dismissal order]; yet Petitioner, in resorting to a literary citation in lieu of a legal one, quotes H.L. Mencken to describe Respondent's perpetration of the educational fraud in question:

> Add to this intellectual emptiness, a bellicose and amusing vanity, and you have a picture of incompetence that is almost tragic.

This court has not shied away from issues in academia as evidenced by Cannon v. The University of Chicago, 441 U.S. 677,730 (1978) in which Mr. Justice Frankfurter set forth

a well-known and spirited defense of academic freedom and the values its enshrines. Likewise, in Keyishan v. Board of Regents of the University of the State of New York, 385 U.S. 589 (1967), Mr. Justice Brennan employed the phrase "the marketplace of ideas" to describe the classroom wherein trust imparted to our educators is one of the highest values. Sweezy v. New Hampshire, 354 U.S. 234,263 (1957) reveals Mr. Justice Frankfurter gain speaking of liberal arts concerns in the university:

> It is the business of a university to provide that atmosphere which is most conducive to speculation, experimentation and creation.

Now aside from the fact that SEHNAP at New York University provides none of the above, these cases are cited to show this court's seeming eagerness to take universities within its consideration mutatis mutandis. And, moreover, the cases reveal the court's grasp of valid teaching, valid subject matter, and valid professorship. Such validity cannot be found in SEHNAP.

a. A judicial failure to distinguish academically valid liberal arts degrees from academically bogus educationist degrees, an issue which extends far beyond Petitioner's immediate Petition in that it involves our national educational system and the ever-increasing competition in the international "marketplace of ideas," is evinced in the district court dismissal and appellate court affirmation.

The fact that American highschool students have scored the lowest in the thirteen industrialized nations is a most alarming fact that approaches the unspeakable. Respondents must share the blame in creating this national disgrace in that they are not teaching any subject and, in turn, producing teachers who likewise are not competent to teach traditional disciplines.

Degrees that appear to be degrees in a subject--such as that of Petitioner which so confused the district and appellate courts(see dismissal order cited above)--are produced incessantly by such degree mills as SEHNAP and the country suffers as a result.

Indeed the situation is so alarming that critics from within the educationist establishment, such as Diane Ravitch, professor of history and education at Columbia University Teacher's College, stated recently in The New York Times(9/2 /89)in reference to the American scores appearing at the bottom of the list, in competition with the aforementioned thirteen countries:

> It was our best students then, not our average students, who scored so poorly...International comparisons of achievement in science and mathematics have shown that there are real deficiences in our educational system. We are not helped to address those deficiencies by rationalizing them away(emphasis added).

One such rationalization would be the attempt to limit the deficiencies to science and math; however, American scores in English, literature, etc. are just as dismal. Another attempt at rationalization would be to attack the bearer of such bad news--as counsel for Respondents have sought to do by attacking Petitioner in the most ad hominem and scandalous of fashions--and declare Professor Ravitch is but a malcontent.

The list of critics who have sought to have education departments such as SEHNAP abolished for the good of the nation is impressive and the ad hominem attacks leveled against them by professors of education and education departments approach the ludicrous.

From Admiral Rickover, Professors Barzun, Bestor, Hutchins, Koerner to even Respondent John Brademas, the criticism has been trenchant. Witness the latter, as president of New York University, writing in Daedulus, Fall Issue, 1984, apropos this subject:

> One of the reasons that the education of American teachers is fundamentally a failure is that professional education, which constructs and controls the training programs, has extremely poor credentials as an academic discipline...(emphasis added)

And President Brademas, to whom Petitioner approached as a last resort before bringing suit against him under the doctrine of respondeat superior, wrote also in the same article:

> I think there's a lot more to it than pedagogy. You've got to know your subject matter...(emphasis added)

Yet President Brademas, as Respondent-Appellee Brademas, has refused to "clean house" at Respondent New York University and instead has opted to permit the ongoing fraud wherein Respondents Schmidt and Berlin continue to delude the public into thinking they are teaching subject matter and continue to produce, under the aegis of Respondent New York University, bogus degrees disguised as liberal arts' degrees, moreover, as detailed in the record below, that are not accepted even within Respondent New York University's liberal arts department.

Village Community School v. Adler, 478 N.Y.S. 2d 546 (N.Y. Cit Civ. Ct. 1984) stated the matter quite succinctly:

> An action for fraudulent misrepresentation in the educational context bespeaks an abuse of trust imparted to our educators and should be entertained by the courts... Deception has no place in the education process

Lefkowitz v. Colorado State Christian College of the Church of the Inner Power, Inc., 76 Misc. 2d 50, 346

N.Y.S. 2d 483 (S.Ct. N.Y. Co. 1973), a citation as with the preceding that appears in the record below, describes a "diploma mill" whose business was to sell degrees. The only difference between the "Church of the Inner Power" and Respondent New York University's SEHNAP is that the latter is accredited: a phenomenon that calls for an overhaul of accredition procedures in the State of New York.

Moreover, the mis-use of academic titles by Respondents such as the indiscriminate application of the title "professor" to graduate students and the attempt to raise the lesser title of "doctor" to an exalted rank adds yet another reason why the degree Petitioner holds is viewed as worthless in liberal arts department, including--as mentioned--the liberal arts department of Respondent New York University.

The highest tile in the bona fide academic world is "professor" and the public is done a disservice, as well as the promotional policy of Respondent itself in that such policy is based on rank, by the bandying about of worthless and laughable doctorates in education(however disguised).

PROPOSITION II

THE COURT OF APPEALS FAILED TO GIVE EQUITABLE ATTENTION TO PETITIONER'S PRO SE STATUS AND THE ESPECIAL INTER-RELATIONSHIP BETWEEN THE DIFFICULTIES OF PLEADING FRAUD WITH PARTICULARITY AND LATER DISCOVERY.

Petitioner has, at all times, proceeding under 28 U.S.C. §1654 in instituting this action pro se. The district court indeed has been mindful of the fact and ruled in its dismissal order that Respondent had no right to requested sanctions over the fact Petitioner filed an amended complaint(pg 5,¶2 of the Dismissal Order as attached):

> Where it does not appear that plaintiff has brought an action in bad faith, defendant is not entitled to costs and attorney's fees.

The district court continues in a most judicious fashion:

> Plaintiff attempted to replead his fraud claim but was unsucessful; this failure does not consitute bad faith. Furthermore, it has been argued that a court should not impose sanctions upon a pro se plaintiff who lacks the training to perceive legal inadequacies in his claim which counsel should have seen(emphasis added)

This said and done, the court bases its dismissal solely on Petitioner's failure to state, with particularity, the "traditional five elements of fraud"(pg. 4,footnote 2 of dismissal order). And indeed the court states on pg. 3,

,¶1:

> The only issue before this Court is whether plaintiff has pleaded fraud with particularity as required by Rule 9 (b).

Now with the pro se status of Petitioner in mind--as well as the realization that Petitioner does not expect undue consideration as a result of that reality--the issue of educational fraud is too important an area to suffer dismissal based on faulty pleading. Therefore, the court should have allowed Petitioner another proverbial "bite at the apple" so as to institute discovery and provide the very moment in which fraudulent statements were made by Respondents, the very handwriting of Respondents Schmidt and Berlin which give unquestionable evidence that the SEHNAP duo had not a clue as to what they were teaching, the very fascimiles of the degrees of Respondents Schmidt and Berlin which are in elementary coaching and elementary classroom techniques, the very financial records--per subpoena--that would have revealed the irregular financing of the SEHNAP program by Respondents.

Petitioner pro se drafted his amended complaint with particular attention to Rule 8 of the FRCP and thus, in the interest of the required brevity of that rule, fell short of the particularity of Rule 9. The crucial issue of discovery, as framed in Rule 16 of the FRCP, was to have followed.

It is for this reason that Petitioner wrote of the ambiguity of the requirements of Rule 8 and Rule 9, when contrasted against one another, as stated in ¶1, pg. 7 of the Suggestion for Rehearing In Banc:

> The rehearing en banc could be of assistance in clarifying the interrelationship between Rule 9 (b) and Rule 8, not only in plaintiff's appeal, but also in a more general sense as applies to other litigants who have been uncomfortably positioned between the Scylla of Rule 8 requirements and the Charbydis of those of Rule 9(b).

2A Moore's Federal Practice §8.02 sums up the matter to wit:

> "Loose pleading" is the cry of an alarmist who unconsciously would punish the client because of the latter's unfortunate choice

of a lawyer who happened to be a poor pleader. The real importance of the Rules dealing with pleadings is that they make pleading, in and of themselves, relatively unimportant. Cases are to be decided on the merits(emphasis added).

The merits of this case are outstanding and the Court of Appeals and the district court have not decided upon them. Indeed, the district was cognizant of the merits when it judiciously permitted Petitioner to file an amended complaint.

Thus, just as Georgex Clemenceau remarked that "War is much too serious a matter to be entrusted to the the military," so the novel field of educational fraud is much too important to be left to lawyers, including an individual acting as his own lawyer.

The courts should have shown more discretion, leadership, and judicial daring in raising the merits of Petitioner's case above the technicalities of pleading and positivistic adherence to such difficult to define--let alone implement--policies of scienter and attendant

specifics which have nothing to do with substance and everything to do with form.

The issue of educational fraud is, Petitioner repeats, a nationwide concern. It has tremendous repercussions in the international arena. It is incumbent upon this court to take the bull by the horns and rescue the merits from the procedural niceties that have led to the former's dismissal.

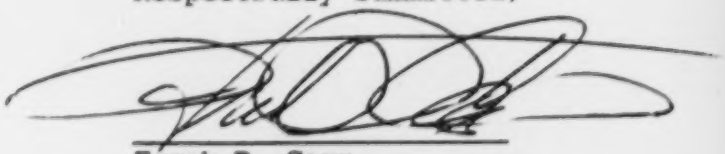
Respondents are in the forefront of miseducating our youth, of engaging in unconscionable fraud that undermines and renders null the classic values of literate and informed societies, and of perpetrating a withering sort of legerdemain that results in professors manqué, in universities manqué, and--saddest of all--in learning manqué.

(Petitioner Pro Se has followed largely the guidelines and commentary set forth in R. Stern, E. Gressman & S. Shapiro, Supreme Court Practice (6th ed. 1986) in the drafting of this petition for writ of certiorari.)

CONCLUSION

For the reasons stated, it is respectfully requested that the Petitioner's Petition for a Writ of Certiorari be granted.

Respectfully submitted,



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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-------*----------

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in one thousand nine hundred and eighty-eight.

Present:

HONORABLE J. EDWARD LUMBARD,
HONORALBE J. DANIEL MAHONEY,

Circuit Judges,

HONORABLE CON. G. CHOLAKIS,

District Judge.*

FRANK D. CAMP,

Plaintiff-Appellant,

-V-

ORDER
88-7200

NEW YORK UNIVERSITY, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of New York.

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*Hon. Con. G. Chokakis, District Judge, United States District Court for the Northern District of New York, sitting by designation.

This casue came to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said disttrict court be and it hereby is AFFIRMED.

1. Plaintiff-appellant appeals from an order of the United States District Court for the Southern District of New York, Shirley Wohl Kram, Judge, dismissing his amended complaint for failure to comply with Fed. R. Civ. P. 9(b). We affirm substantially for the reasons stated in that portion of the opinion below directed to this issue.

J. EDWARD LUMBARD

J. DANILED MAHONEY,
Circuit Judges

CON. G. CHOLAKIS,
District Judge

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 5th day of June one thousand nine hundred and eighty-nine

FRANK D. CAMP,

Plaintiff-Appellant

v.

NEW YORK UNIVERSITY, ET AL.,

Defendant-Appellee.

Docket No. 88=7200

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by Plaintiff-Appellant, Frank D. Camp, pro se.

Upon consideration by the panel that heard the appeal, it is

ORDERED that the said petition for rehearing is DENIED.

It is further notd that the suggstion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

ELAINE B. GOLDSMITH
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK D. CAMP
Plaintiff,

-against-
NEW YORK UNIVERSITY, ET AL.,
Defendant.

86 CIV. 1431 (SWK)

MEMORANDUM OPINION AND ORDER

SHIRLEY WOHL KRAM, U.S.D.J.

Plaintiff initially brought this action pursuant to 42 USC §1983 alleging deprivation of his due process rights as well as several state law claims. In an order dated April 27, 1987, this Court granted summary judgment to the defendant on plaintiff's state claims, dismissed plaintiff's constitutional claims and granted plaintiff leave to replead his fraud claim. This Court consider defendant's motion to dismiss the amended complaint pursuant to Fed. Rule Civ. P. ("Rule")9(b)and 12(b)(6). Also, before the Court is defendants' motion to impose sanctions pursuant to Rule 11. For the following reason, defendant's (motion)

to dismiss is granted but the motion for sanctions is denied. [1]

FACTS

Plaintiff is a former graduate student at New York University's ("NYU" School of Education, Health, Nursing and Arts Professions ("SEHNAP"). Plaintiff attended SEHNAP's "Study Abroad Program", ("the program")and obtained a Master of Arts degree. While in the program plaintiff became dissatisfied with all facets of his education and commenced a grievance proceeding claiming arbitrary grade assignments, substandard instructjors and teaching methods, and various financial improprieties. After receiving his degree, plaintiff sought admission to SEHNAP's rejection of his graduate application violated his constitutional due process rights. Plaintiff also alleges that the entire SEHNAP program re-represented a conspiracy to defraud students into believing that they would receive a liberal arts degree upon completion of the program. Plaintiff's final allegation was that he was a victim of the defendants' fraudulent conduct and as a result was a awarded a "worthless degree" that made him a "persona non grata" in graduate school.

1. Since plaintiff's complaint is being dismissed pursuant to Rule 9(b), this Court will not consider defendants'12(b)(6) motion.

Discussion

The only issue before this Court is whether plaintiff has pleaded fraud with particularity as required by Rule 9(b). Defendant insists that plaintiff has not done so and this Court agrees. Therefore, defendant's motion to dismiss the amended complaint is granted.

Rule9(b)requires that:

> In all averments of fraud or mistake, the mistake, the circumstances consituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally.

The particularity requirement exists primarily to protect defendants from frivolous suits. Specifically, Rule 9(b) exists to give the defendant in a fraud action "fair notice plaintiff's claim is and the grounds upon with it rests." Ross v. A.H. Robbins, 6-7 F. 2d 545,557(2d Cir.1979), cert. denied 447 U.S. 946 (1980) (citations omitted). The key to any Rule 9(b)motion is whether the complaint can apprise the defendant of the alleged conduct with enough detail to enable the defendant to prepare a defense. See Credit and Finance Corp. Ltd. v. Warner & Swasey Co., 638 F. 2d 563,567(2nd Cir. 1981). (unartfully drawn complaint stated enough particulars to provide defendants with "fair notice")

As a general rule, allegations in a fraud complaint must specify the time, place, speaker, and sometimes even the content

of the alleged misrepresentations. DiVittorio v. Equidyne EXRACTIVE INDUSTRIES, INC., *22 F. 2d 1242, 1247(2nd Cir.1987).

Plaintiff's Amended Complaint fails to allege fraud with the particularity required by Rule 9(b). Plaintiff alleges that SEHNAP conspired to disguise itself as a liberal arts program so as to defraud students into enrolling in its study abroad program. Plaintiff further alelges that the entire program was designed to defraud students into believing they would receive a liberal arts degree. Consequently, argues the plaintiff, he received a "worthless degree" that prevented him from obtaining admission to graduate school. PLaintiff also insists that as a result of defendant's fraud he has suffered monetary losses and damage to his reputation.

However, plaintiff completely fails to substantiate his claims with any examples of specific misrepresentations made to him by the defendants. Plaitniff fails to state the time, place or contents of any allegedly false statements made to him. Furthermore, plaintiff presents no examples of how he relied to his detriment on any of the alleged misrepresentations made to him.[2] This Court fails to see how the plainiff was harmed in any way by receiving a Master of Arts degree. In sum, plaintiff fails to state any allegations that would apprise the defendants of their fraudulent conduct such that they could prepare an

---

New York law requires proof of the traditional five elements of fraud:misrepresentation of material fact, falsity of that misresentation, scienter, reliance, and damages. Mallis v, Bankers Trust Co. 615 F.2d 68,80(2d Cir.1980),cert denied, 101 S. Ct. 938,

adequate defense.

Plaintiff has completely failed to plead fraud with particularity. Consequently, plaintiff's amended complaint must be dismissed with prejudice.

Defendant's Motion for Sanctions

Where it does not appear that plaintiff has brought an action in bad faith, defendant is not entitled to costs and atttorney's fees. Altschuler v. Paine, Webber, Jackson and Curtis, F. Supp. 591,596 (S.D.N.Y. 1981). This Court has nothing before it to substantiate defendants' accusations that plaintiff acted in bad faith when he filed this aciton. Plaitniff attempted to replead his fraud claim but was unsuccessful;this failure does not constitute bad faith. Furthermore, it has been argued that a court should not impose sanctions upon a pro se plaintiff who lacks the training to perceive legal inadequacies in his claim which counsel should have seen. Cavallary v. Lakewood Sky Diving Centger, 623 F. Supp. 242, 244 (S.D.N.Y. 1985).

Therefore, defendant's motion for sanctions is denied.

SO ORDERED.

SHIRLEY WOHL KRAM
United states district Judge

Dated: New York, New York
February 17, 1988